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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re VoiceMatch Corporation

Serial No. 76433641

John Kaufman, CEO of VoiceMatch Corporation.

Jeri Fickes, Trademark Examining Attorney, Law Office 107
(J. Leslie Bishop, Managing Attorney).

Before Hohein, Drost and Zervas, Administrative Trademark
Judges.

Opinion by Zervas, Administrative Trademark Judge:

VoiceMatch Corporation (proceeding pro se) has
appealed from the final refusal of the examining attorney
to register VOICEMATCH (in standard character form) on the
Principal Register as a trademark for "[d]evelopment of new
technology for others in the field of biometric voice
templates (also called voiceprints) which is compatible
with prior made voice templates" in International Class 42.¹

¹ Application Serial No. 76433641, filed July 24, 2002, based on
Section 1(b) of the Trademark Act (intent-to-use).

Registration has been finally refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive of its identified services. Additionally, the examining attorney has construed applicant's submission of "supplemental evidence" during the prosecution of applicant's application as a claim in the alternative of acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f), and maintains that applicant's showing of acquired distinctiveness is insufficient.

Applicant has appealed the final refusal. Both applicant and the examining attorney have filed briefs. Applicant did not request an oral hearing.

Applicant has explained its technology as follows:

VoiceMatch system is an advanced technology that possesses many unique scientific features to be able to reconstruct older voice templates [i.e., "an individual person's original recording"] and have these older templates usable with newer technologies. A user is able to upgrade its system (comprising a computer with an external microphone, a remote server holding speaker templates, and various interface software to work with Windows, Linux or other operating systems) so that different versions of software (such as a new Windows upgrade or a new VoiceMatch template recording system) can still work with older versions produced for the organization. Brief at p. 4.

It is the Examining Attorney's position that applicant's mark merely describes the ultimate purpose of

the services, i.e., "to provide voice matches by means of template expansion, as well as the particular field of the new technology development, namely voice match technology." Brief at p. 3. The examining attorney relies on the definitions of "voice" and of "match" made of record with the Office action of November 2, 2004:

Voice:

- 1.a. [t]he sound produced by the vocals organs of a vertebrate;
2. [a] specified quality, condition or pitch of vocal sound.

Match:

- 1.a. [t]o be exactly like, correspond exactly.

The examining attorney concludes that a "'voicematch' or 'voice match' are sounds produced by vocal organs of a vertebrate that correspond exactly." Brief at p. 5. We agree that "voicematch" or "voice match" has the meaning stated by the examining attorney.

We must now determine whether VOICEMATCH, as defined above, forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for

which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979).

The examining attorney has submitted with her November 12, 2003 Office action printouts from two web sites using "voice" and "match," and "voice match," in the context of access security using voice recognition:

www.research.ibm.com

The program may also ask the user to answer some challenging questions to more exactly match the user's voice with their pre-recorded voice samples (during enrollment) stored in a database for identity verification before the normal Windows Desktop screen will resume or the user is allowed to ... use an application, a data file or view a document.

* * *

Since this is [a] security program (much different than a password type program) a voice match is what is wanted/needed. Like a fingerprint reader we are looking for the same print, not one that just comes close.

www.1stvoice.com

Based on an initial voice command (request to open the email box), the VIVA [Voice Identification and Verification Agent] is capable of identifying the user acoustically. Then it opens an authentication interview to verify the identify. Due to a good voice match only one

question is asked to successfully verify the caller.

Additionally, applicant itself has used the terms "voice" and "match" in discussing biometric voice templates. At p. 4 of its brief, it states that "[t]here has been a lot of confusion in marketing a new technology that can match an individual person's voice with different words which were not on that individual person's original recording (known as the individual speaker's template)." Similarly, at pp. 5-6 of its brief, applicant states:

VOICEMATCH ... can be used in everyday concise conversations, such as, "Did you make a VOICEMATCH of that suspect with the prior recorded voice on the phone as well as with the cell phone? And does it compare with the taped conversation from last year where we only had 10 seconds available for a template back then?

Applicant uses "voice match" not in a trademark sense, but to indicate that the suspect's voice is being matched with his prior recorded voice. We also note that one of applicant's customers, in its letter in support of registration of the mark, makes use of "match" in discussing a feature of applicant's technology.

Specifically, Girard Pessis of the California Medical Association states: "when we hear the name **VoiceMatch** we immediately associate the fact that your technologies can

use the same template, for a more efficient 'match' of an individual's own unique identify." (Emphasis in original.)

Applicant argues that "[m]ere descriptiveness' is not completely true as the technology encompasses several different fine-tuned formats (the operating platform like Windows or Linux; the size of a speaker's template such as 15 seconds or 30 seconds; the 'channel' such as a cellular phone or a computer; and the algorithm or its derivatives [sic])" Brief at p. 5. Applicant also argues that VOICEMATCH "can mean many different things to different people. Superficially, the word may mean a matched voice; a 'voice match'. However, we are asking to obtain the mark to represent highly specific tasks that go far beyond a 'voice match'." Brief at p. 7. Applicant's arguments are not well taken. A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; rather, it is enough that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973).

From the foregoing, we find that the mark VOICEMATCH, which is a combination of the defined terms "voice" and "match," immediately and without thought or conjecture,

merely describes a feature or characteristic of applicant's services, i.e., that applicant's development of new technologies for others in the field of biometric voice templates entails the matching of voices or determining a voice match.

Because we have concluded that applicant's mark is merely descriptive of a feature or characteristic of its services, we now consider applicant's claim - which we construe as being made in the alternative - that its mark has acquired distinctiveness.

Applicant has not specifically asserted that it claims acquired distinctiveness under Section 2(f), and its application remains as a Section 1(b) (intent-to-use) application. However, in its September 8, 2003 response, applicant stated under the heading "Supplemental Evidence of Use" that its mark is in use and has been since September 2002; and submitted a letter from a customer and a letter from a "bank consultant" that show that "VOICEMATCH is already recognized in commerce as representing compatible voice template systems." Applicant's submission with its May 7, 2004 response includes a CD-ROM in a case labeled VOICEMATCH, of which about 240 have been mailed or handed out; a letter agreement between applicant and Voicematch Technologies,

Ltd. in which Voicematch Technologies, Ltd. agreed to change its name; and a sample of its marketing literature. Further, applicant stated that VOICEMATCH has been in use "continually" since September 2002 at its website "www.voicematchcc" and has been used on its software (CD ROMs) since April 14, 2003.

While this appeal involves an intent-to-use application, an intent-to-use applicant who has used its mark on related goods or services may nonetheless file a claim of acquired distinctiveness before filing an amendment to allege use or statement of use if the applicant can establish that, as a result of the applicant's use of the mark on other goods or services, the mark has become distinctive of the goods or services in the intent-to-use application, and that this previously created distinctiveness will transfer to the goods and services in the intent-to-use application when use in commerce begins. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001).

The Board has set forth the requirements for showing that a mark in an intent-to-use application has acquired distinctiveness:

The required showing is essentially twofold. First, applicant must establish, through the appropriate submission, the acquired

distinctiveness of the same mark in connection with specified other goods and/or services in connection with which the mark is in use in commerce. All of the rules and legal precedent pertaining to such a showing in a use-based application are equally applicable in this context.... Second, applicant must establish, through submission of relevant evidence rather than mere conjecture, a sufficient relationship between the goods or services in connection with which the mark has acquired distinctiveness and the goods or services recited in the intent-to-use application to warrant the conclusion that the previously created distinctiveness will transfer to the goods or services in the application upon use.

In re Rogers, 53 USPQ2d 1741, 1744 (TTAB 1999). See also Trademark Manual of Examining Procedure § 1212.09(a) (4th ed. 2005).

Applicant's showing of acquired distinctiveness for the merely descriptive term VOICEMATCH for software or "compatible voice template systems," i.e., for goods which applicant presumably maintains are related to the services identified in its application, falls short of the quantum of evidence required for a showing of acquired distinctiveness. Applicant has only used its mark for a limited time period, there is no evidence of advertising expenditures, there are only two letters from the public in support of applicant's claim, and only one item of advertising - which the examining attorney characterizes as a marketing sheet and which is merely a comparison of applicant's technology with

that of an entity known as "Nuance." Further applicant's statements regarding entities with which it is in "talks to license" or "informal discussion" are simply too vague or insufficient in number to establish acquired distinctiveness. Accordingly, we find that applicant has not established acquired distinctiveness for the mark when used in association with the services which are the subject of applicant's application. See Trademark Rule 2.41(a).

Decision: The refusal to register on the Principal Register on the basis that applicant's mark is merely descriptive under Section 2(e)(1) and that applicant has failed to prove the applied-for mark has acquired distinctiveness under Section 2(f) of the Trademark Act is affirmed.